IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Second Appeal No. 166 Of 2003

(Memorandum of Second Appeal U/S 100 of C.P.C.)

APPELLANTS
DEFENDANTS : 1 A. Bipat Ram S/o Jahawal aged about 35 years.

B. Madhoram S/o Jahawal aged 25 years.

C. Smt. Laxmi Bai Wd/o Jahawal aged 60 years.

All by occupation agricultu--rist, resident of Village Ranbodh, Tehsil Bemetara District Durg .

D. Bhaga Bai Wife of Julesar aged 27 years, occupation agriculturist, resident of Village Murla, Tehsil Bemetara District Durg (CG).

2. Jhamna S/o Roop Rai aged 50 years, occupation cultivation resident of Village Ranbodh, Tehsil Bemetara District Durg.

3A. Teejan Bai wd/o Latel aged 70 years.

B. Dongrha S/o Latel Ram aged 35 years,

Both resident of village Ranbodh, Tehsil Nawagarh District Durg .

P.R. No. 3867/03
Presented by Shri S.Pandey
dated 13.02.03

Versus

RESPONDENTS
PLAINTIFFS : 1. Bhojram S/o Sadhu Ram, occupation cultivation, r/o Village Andhiyarkhor , Tehsil Mungeli District Bilaspur.

2A. Naresh S/o Manrakhan aged 55 years.

B. Mahesh Ram S/o Manrakhan aged 50 years.

Both by occupation agricul--turist, resident of Ranbodh Tehsil Nawagarh District Durg.

3. The State of Madhya Pradesh Now Chhattisgarh, through the Collector, Durg (CG).

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6/2/03
FOR A.G. BILASPUR

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF C.P.C.

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 166 **सन्** 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23/02/2007

Shri H.S. Patel, counsel for the appellants.

Shri Akhil Agrawal, Panel Lawyer for the State/respondent No. 3.

Heard on admission.

The appellants are aggrieved by the judgment and decree dated 11.10.2002 passed in Civil Appeal No. 17-A/2002 whereby the judgment and decree dated 24.12.1981 passed by Civil Judge, Class-II, Bemetara in Civil Suit No. 68-A/1980 was affirmed.

Brief facts are that Bhojram-respondent No. 1/plaintiff filed a Civil Suit No. 68-A/1980 on 29.11.1979 for cancellation of three sale deeds purporting to have been executed by his father Sadhu Ram in favour of defendants No. 2 and 3 on 9.4.1966 on the ground that Sadhu Ram had expired on 22.2.1965. It was pleaded that on 9.4.1966 i.e. the execution of the above mentioned sale deeds, the plaintiff Bhojram was a minor and that he had knowledge of the execution of the above sale deeds by the defendant in collusion with one Jhanglu, only in the year 1979.

Learned Civil Judge, Class-II, Bemetara on proper appreciation of evidence oral as well as documentary i.e. the entries in the copy of Fauti register (register of death) recorded a finding of fact that Sadhu Ram had expired on 22.2.1965, therefore, could not have executed the above mentioned sale deeds on 9.4.1966. It also recorded a finding that the suit was not barred by limitation.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 116 **सन् 2003**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Aggrieved by the judgment and decree, the appellants preferred First Appeal. Learned Appellate Court also affirmed the finding of fact recorded by the learned Civil Judge, Class-II, Bemetara regarding death of Sadhu Ram on 22.2.1965. On proper appreciation of evidence, it also recorded a finding that the plaintiff was a minor on the date of execution of the above mentioned sale deeds and learnt about their execution only in the year 1979 i.e. the year in which the suit was filed. On these premises, it recorded a finding that the suit was within limitation.

In view of the concurrent finding of fact recorded by both the Courts below that Sadhu Ram had expired on 22.2.1965 and could not have executed the above mentioned sale deeds on 9.4.1966 and that the suit was not barred by limitation, is based on proper appreciation of evidence oral as well as documentary, no substantial question of law is involved in this appeal. As a result, this Second Appeal is dismissed at the stage of admission.

In view of above, M.(C) P. No. 2200/2006 for grant of interim relief and I.A. No. 4127/2006 for out of turn hearing also stand dismissed.

No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr

P.T.O.